IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2909 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRAJBHAI D MAKWANA ROOM NO 96,

Versus

SUPERINTENDENT

Appearance:

MR HARDIK C RAWAL for Petitioner

M/s Patel Advocates for respondent no.1

Mr.Digant P. Joshi for M/s Patel Advocates.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 19/04/2000

ORAL JUDGEMENT :

Rule. Service of the rule is waived by Mr.Digant P. Joshi, AGP.

1. The matter is taken up for final disposal with

the consent of the parties. The petitioner challenges the action of oral termination of the petitioner's services by the respondent with effect from 2.3.2000. It is the case of the petitioner that the petitioner's services were terminated only with a view to accommodate another person on ad hoc basis on the sanctioned post. Mr.Raval for the petitioner has prayed for the relief to the effect that the oral order of termination of service of the petitioner passed by the respondent be quashed and set set aside and the respondent be directed to continue the petitioner on his original post. Mr.Raval has also prayed that the petitioner shall be continued on the sanctioned post till regular appointment is made and that the petitioner shall be considered by the respondents while making selection of a regular candidate, as the petitioner has put in 8 years of service. Mr.Raval has submitted that the petitioner was appointed by an order dated 30.8.1993, a copy of which is produced by Mr.Raval pursuant to an order dated 13.4.2000 passed by this Court. It is the case of Mr.Raval that since then the petitioner is continued in service and in the year 1997, the petitioner was given an appointment for 4 hours as a part time daily wager. It was clearly mentioned in the order dated 1.5.1997, Annexure'A' that the petitioner is appointed in "Panchkarma Section" and that in future, as and when the post of Panchkarma employee is filled in, the petitioner will be required to be relieved of his services.

Mr.Raval, learned advocate for the petitioner is ready to restrict his prayer to the extent that until the post in question is filled in by regular appointment, the services of the petitioner may be continued and that the petitioner may be given an opportunity to participate in the selection in filling up of the post in question on regular basis. The request of Mr.Raval for the petitioner is reasonable. The fact that the petitioner continued in service from 30.4.1993 till the petitioner's services came to be orally terminated on 2.3.2000 shows that the respondent is in need of the services of a person, in other words, the nature of work is of permanent nature.

2. Taking into consideration the facts of the case, the petition is allowed. The respondent is directed to allow the petitioner to continue as Panchkarma employee on the same terms and conditions on which he was working prior to his termination on 2.3.2000 by an oral order till the post of Panchkarma employee is filled in by a regular incumbent. It is further directed that the respondent shall consider the case of the petitioner at

the time of selection of a regular candidate by taking into consideration the services rendered by the petitioner with the respondent. The respondent is also directed to look into the matter for payment being made to the petitioner as per the rules and regulations of the Govt.

3. With the aforesaid observations/ directions the petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(Ravi R. Tripathi, J.)

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